IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.454 OF 2005
IN
NOTICE OF MOTION NO.1523 OF 2005
IN
SUMMARY SUIT NO.698 OF 2003

Rosy Blue Securities Private Ltd. .. Appellant

v/s.

Messrs Jayantilal Khandwala & Sons
& ors. .. Respondents

Mr.Shekhar Naphade, senior counsel with Ms.S.Kaushik and Ms.S.Tandon i/by M/s.DSK Legal for the appellant.

Mr.V.N.Kantawala i/by M/s.Kantawala & Co. for the respondents.

CORAM : R.M. LODHA AND
J.P. DEVADHAR, JJ.

DATED : 14th June, 2005

P.C.

Heard.

2. In Stock Exchange, Ahmedabad v. Asstt. Commissioner of Income-tax, Ahmedabad, AIR 2001 SC 1071, the Supreme Court held that the right of membership in the Stock Exchange or membership card is merely a personal privilege granted to a member. In paragraph 9 of the report, the Supreme Court held thus-

> "9. The Stock Exchange Rules, Bye-laws and Regulations have been approved by the

> Government of India under the Securities Contracts (Regulations) Act, 1956. Thee is no challenge to these Rules. The question whether right of membership confers upon the member any right of property is, therefore, to be examined within the framework of the Rules, Bye-laws and Regulations of Exchange. On a plain and combined reading of the Rules, it is clear that right of membership is merely a personal privilege granted to a member, it is non-transferable and incapable of alienation by the member or his legal representatives and heirs except to the limited extent as provided in the rules on fulfillment of conditions provided therein. The nomination wherever provided for is also not automatic. It is hedged by Rules. On right of nomination vesting in the Stock Exchange under the Rules, that right belongs to the Stock Exchange absolutely. The consideration received by the Stock Exchange on exercise of the right of nomination vesting in it, is to be applied in the manner provided in Rule 16."

3. Mr.Shekhar Naphade, the learned senior counsel for the appellant sought to distinguish the aforesaid judgment of the Supreme Court. He submitted that in the judgment cited supra, the member was the defaulter and the membership card vested in the Stock Exchange. In our opinion, the distinction drawn by the learned senior counsel does not alter the legal position in respect of the status of membership in the Stock Exchange. The Rules, Bye-Laws and Regulations of Mumbai Stock Exchange are identical to that of Ahmedabad Stock Exchange which were under consideration by the Supreme Court.

4. In Vinay Bubna v. Stock Exchange, Mumbai, AIR 1999 SC 2517, it was held by the Supreme Court that the membership of the Stock Exchange is a personal permission from the Exchange to exercise the rights and privileges attached thereto. It is not a private asset.

5. The thrust of Mr.Naphade's contention is that the rules provide for right of nomination. The nomination being right attached to the membership of the Stock Exchange, the membership is nothing but a legal right and such right is attachable. In Vinay Bubna, it has been held in unequivocal terms in the light of the Bombay Stock Exchange Rules, Bye-Laws and Regulations that the membership of the Stock Exchange is a personal permission from the Stock Exchange to exercise the rights and privileges attached thereto and that it is not a private asset. When the membership of the Stock Exchange itself is a privilege and not a private asset, the right of nomination provided in Rule 7 cannot stand on higher pedestal and will not make the membership of the Stock Exchange a legal right.

6. In our considered view, the controversy having been concluded by the judgments of the Supreme

Court noticed above, the impugned order cannot be faulted.

7. Appeal is, accordingly, dismissed in limine.

8. For a period of four weeks, the order of status-quo granted by the learned Vacation Judge on 24th May, 2005 shall remain operative for a further period of six weeks from today.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)